State of Punjab

Vs

Balraj Singh alias Chhajju

Criminal Appeal No. 205 of 1975

(P. N. Singhal, Jaswant Singh, Syed M. Fazal Ali JJ)

20.02.1978

JUDGMENT

FAZAL ALI, J. -

1. This appeal by special leave is directed against the judgment of the Punjab and Haryana High Court dated September 10, 1974 by which the appellant Balraj Sing alias Chhajju has been acquitted of the charges framed against him.

2. The facts of the case have been succinctly stated in the judgment of the High Court as also that of the learned Sessions Judge. It appears that two accused Balraj Singh alias Chhajju Ram Balkar Singh alias Khola were prosecuted before the Sessions Judge who acquitted Balkar Singh alias Khola but convicted the respondent Balraj Singh alias Chhajju under Section 302 and sentenced him to death and also convicted him under Section 307, IPC and Section 25 of the Arms Act. The respondent filed an appeal to the High Court and a reference was made by the Sessions Judge for confirmation of his death sentence. The High Court after careful consideration of the evidence held that the case against the appellant was not proved beyond reasonable doubt and accordingly acquitted the appellant of all the charges framed against him. Hence this appeal before us.

3. It is alleged that on April 14, 1973 deceased Swaran Singh accompanied by his brother Surat, PW 3 and son Harjit Singh, PW 4 was passing through the wheet field in Village Patti when he was accosted by the accused, who challenged Swaran Singh deceased to get ready for being taught a lesson for his acting as an informer against him by supplying information to the police regarding the theft of a tractor belonging to Kritpal Singh. The witnesses PW 3 and PW 4 were following the deceased. The respondent is said to have fired a shot at the deceased which injured him in his chest and abdomen and resulted in his death. PW 3 and PW 4 on seeing the incident turned their back and ran away raising an alarm. The respondent then fired his pistol at them and injured both of them. A FIR was lodged at about 11.55 p.m. and, after usual investigation, charge-sheet was submitted against the respondent and he was committed for trial before the Sessions Judge who ultimately convicted and sentenced him as indicated above.

4. We have heard learned Counsel for the parties and have gone through the judgment of the High Court and of the Sessions Judge and perused the evidence on the record. This being an appeal against acquittal, it is well settled that this Court would ordinarily interfere only when there are special reasons or a substantial error has been committed by the High Court in acquitting the accused. It appears that the conviction of the appellant rests mainly on the evidence of PW 3 Surat Singh and Harjit Singh PW 4. PW 4 Harjit Singh a boy of tender years had in fact committed some "confusion" in identifying the accused before the committing court. Later on when he was again

asked to identify the respondent Balraj Singh, he did so. Nevertheless even the trial court had come to a clear finding that there had been some confusion in the mind of the child regarding the identification of the respondent and it was not prepared to place implicit reliance on his testimony as it observed that even if evidence of PW 4 was excluded the statement of PW 3 was sufficient to sustain the conviction of the respondent.

5. The High Court thought it rather unsafe to base the conviction of the respondent on the uncorroborated testimony of PW 3, Surat Singh. The High Court has also given reasons for not relying on the testimony of PW 3. We may not approve of some of the reasons given by the High Court, and perhaps if we were sitting in appeal we may have taken a different view of the matter, but that is no ground for reversing an order of acquittal. The High thought that it difficult to believe that the respondent would have raised any "lalkara" so as to facilitate his identification. This finding is based purely on speculation and we find no inherent improbability in this circumstance. We have come across many cases where we found that in Punjab a "lalkara" preceded an assault. Secondly the High Court held that the pellet injuries on PW 3 and 4 appear to be fabricated. Having regard, however, to the nature of the pellet injuries received by PWs 3 and 4 it is not possible for us to hold that the injuries could be fabricated. When a suggestion was made to the doctor that the injuries could have been caused by a "sua" it was emphatically denied by Dr. Khera, PW 1 on the ground that such fabricated injuries would have been of a larger dimension. In these circumstances we are of the opinion that there was no justification for the High Court to have drawn an inference that the injuries on the person of PW 3 and 4 were fabricated.

4. Mr. Mukherjee appearing for the respondent has drawn our attention to two circumstances which raise a doubt regarding the identification of the respondent by the witnesses. In the first place he submits that there is absolutely no evidence to show that the respondent knew that the deceased and the witnesses would be passing through the fields at that particular time of the night so as to enable the accused to lie in wait for them. There is no suggestion at all that it was a part of daily routine of the deceased or the witnesses to pass through the field at about 8.30 to 9.30 p.m. so that the accused being aware of the same would try to select a particular time for the assault. Secondly it was submitted that having regard to the distance from which PW 3 and PW 4 identified the respondent and the circumstances in which they did so raises a possibility of doubt. It is the admitted case of the parties that the occurrence had taken place in a wheat field which was ready for harvesting. It is but natural that standing crop would to some extent obstruct the view of the witnesses. According to Patwari PW 6 he had prepared the site plan after proper measurements and the scale, according to him, was 1 inch = 60 karams. On the basis of this measurement it would appear that PW 3 and PW 4 would be at a distance of about 150 ft. when they saw the respondent. In view of these circumstances therefore, although it may have been possible for the witnesses to identify the respondent, the possibility of mistake in identification cannot be excluded. We are, therefore, not inclined to interfere with the judgment of the High Court.

7. For the reasons given above we find no merit in this appeal which is dismissed. The respondent who is in custody in directed to be released forthwith.

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